

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ABU DHABI COMMERCIAL BANK, et al.,  
Together and on Behalf of All Others Similarly  
Situated,

Plaintiffs,

- against -

MORGAN STANLEY & CO.  
INCORPORATED, et al.,

## Defendants.

Civil Action No. 1:08-cv-07508-SAS  
**ECF Case**

**DEFENDANTS' OPPOSITION  
TO PLAINTIFFS' APPLICATION  
FOR ISSUANCE OF A LETTER  
OF REQUEST FOR  
INTERNATIONAL JUDICIAL  
ASSISTANCE**

Defendants Morgan Stanley & Co. Incorporated, Morgan Stanley & Co.

International Limited, Standard & Poor's Ratings Services, The McGraw Hill Companies, Inc., Moody's Investors Service, Inc. and Moody's Investors Services Ltd. hereby oppose plaintiffs' Application for Issuance of a Letter of Request for International Judicial Assistance to permit deposition testimony from Tim Armstrong, Gregg Drennan, Dorothee Furhmann, Kai Gilkes, Perry Inglis, and Henry Tabe.

Plaintiffs' application violates Rule 30(a)(2) of the Federal Rules of Civil Procedure, which provides that “[a] party must obtain leave of court . . . if the parties have not stipulated to the deposition and . . . the deposition would result in more than 10 depositions being taken under this Rule or Rule 31 by the plaintiffs.” Indeed, this Court, at an April 21, 2010 conference, reinforced to plaintiffs that “there are only ten because that’s what the federal laws say. Unless and until I grant you leave to take more than ten, it’s exactly ten.” (Tr. of April 21, 2010 Conf. at 3:21-23.) To date, Plaintiffs have noticed or taken a total of nine depositions in this case, yet in the pending application

seek an additional six depositions, which would result in total of fifteen depositions noticed or taken by plaintiffs.<sup>1</sup> Plaintiffs have obtained neither the consent of defendants nor leave of Court to exceed the depositions permitted under the Federal Rules. Indeed, plaintiffs have not sought either, nor acknowledged that their pending application would result in a violation of the Federal Rules. If plaintiffs believe they are entitled to more than ten depositions, that issue should be addressed directly and decided by the Court, not presupposed as it is in plaintiffs' application.

For the foregoing reasons, the Court should deny plaintiffs' application.<sup>2</sup>

Dated: New York, New York  
October 18, 2010

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<sup>1</sup> During the class certification stage, plaintiffs took one 30(b)(6) deposition of each of the three defendants and since that time have noticed the depositions of Rany Moubarak, Robert Rooney, Lapo Guadagnolo, David Rosa, Frank Raiter and, earlier today, Ilya Eric Kolchinsky.

<sup>2</sup> Defendants do not address herein additional deficiencies under English law, but reserve the right to oppose the application on those grounds.

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